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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,069	12/06/2001	Masashi Shiomi	0033-0778P	4862
2292	7590	09/08/2006	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			PAULA, CESAR B	
			ART UNIT	PAPER NUMBER
			2178	

DATE MAILED: 09/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/003,069	Applicant(s) SHIOMI ET AL.	
	Examiner CESAR B. PAULA	Art Unit 2178	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 40-52.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

CESAR B PAULA
Primary Examiner
Art Unit: 2178

Continuation of 11. does NOT place the application in condition for allowance because: The Applicants indicate that the specification provides support for claims 40, 47, and 52 (page 7). The Examiner disagrees, because page 29, line 32-page 30, line 20 contains nothing related to the reception of data while, or after the application is being terminated. The specification on page. Page 32, lines 6-22 does not show the use of additional data to be operated upon by the application, before the application is run. It simply states that that data is stored from a server, before an operating unit is turned on. There is no description that the storage takes place in response to the turning on of the application as recited in claim 52. The additional data is operated on after the application is turned on not before as purported by the Applicants.

Regarding claim 40, the Applicants state that Shaw does not teach the receiving of data while the application is being terminated (page 8). The Examiner disagrees, because Shaw teaches the termination of the email application's connection to the server (col.4, lines 11-20). As far as the Examiner can understand the claim language in light of the 35 USC 112, 1st parag. rejection, Shaw is teaching the limitation in question.

Regarding claim 47, the Applicants indicate that Shaw does not disclose receiving additional data when the processor is not running an application (page 9, parag.5-page10, parag.1). The Examiner disagrees, because based upon the understanding of the claim in light of the 35 USC 112 rejection, Shaw teaches the display of advertisements, while the application is offline or the processor is not running to access data from the server (col.4, lines 41-46, col.14, lines 1-67).

Regarding claim 52, the Applicants indicate that Shaw does not disclose using additional data and displaying an advertisement based on the additional data, in response to a request to run the application, and before the application is running (page 10, parag.3-4). The Examiner disagrees, because based upon the understanding of the claim in light of the 35 USC 112 rejection, Shaw teaches the display of advertisements, using files containing the ads and instructions to display the them, while the application is offline or the application is run to access data from the server (col.4, lines 41-67, col.14, lines 1-67).

The newly submitted claims cannot be entered, because they require a new search and/or consideration to determine their patentability.

Regarding claim 48, the Applicants submit that no motivation to combine Shaw and Acres has been shown (page 11, parag.5-page 12, parag.1). The Examiner disagrees, because of all the reasons taught by Acres not excluding displaying ads while offline without having to constantly interact with a server (0016), thereby freeing up resources needed by the computer to dedicate elsewhere, such as the resource-intensive playing of a video game.



CESAR PAULA
PRIMARY EXAMINER